

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

The 4.9 GHz Band Transferred From
Federal Government Use

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WT Docket No. 00-32

To: The Commission

Comments of the Association of American Railroads

The Association of American Railroads ("AAR"), by its undersigned counsel, hereby submits its Comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the above-referenced matter, FCC 02-47, released February 27, 2002. AAR's comments are directed to the question raised by the Commission at paragraphs 31-34 of the FNPRM concerning eligibility to use the 4.9 GHz band.

AAR is a voluntary non-profit organization composed of Class I member railroad companies operating in the U.S, Canada and Mexico. One of AAR's roles is to represent its members in connection with federal regulatory matters of concern to the railroad industry, including matters relating to communications and access to radio frequency spectrum. Also, AAR is the organization certified by the Federal Communications Commission ("FCC) as the designated frequency advisory committee that coordinates licensing in the Private Land Mobile Radio (PLMR) bands for railroad use. In this regard, AAR serves as the frequency coordinator not only for its own

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members, but also for other entities that meet the definition of “railroad licensee” in Section 90.7 of the FCC’s rules (such as metropolitan transit authorities and regional and short-line railroads).

The railroad industry’s heavy reliance on spectrum for wireless communications networks, both mobile and fixed, is well known to the Commission and has been extensively described in recent filings. On March 6, 2002, for example, AAR filed extensive comments with the Commission describing railroad spectrum use in response to the FCC’s Public Notice released February 14, 2002 (DA 02-631) concerning the report of the National Telecommunications and Information Administration (“NTIA”) entitled “Current and Future Spectrum Use by the Energy, Water and Railroad Industries.” And more recently, on July 8, 2002, AAR submitted comments to the Chairman’s Spectrum Policy Task Force (ET Docket No. 02-135), including a comprehensive, band-by-band description of how the railroad industry uses spectrum, especially for safety-related applications.

In the instant proceeding regarding the future use of spectrum that was recently re-allocated from Federal government use, the Commission has decided that the 4.9 GHz band “should be designated for use in support of public safety,” particularly for accommodating broadband, short-range communications,¹ and has requested comment on the criteria to be employed for determining what is a “public safety” entity for the purpose of eligibility to use the 4.9 GHz spectrum.²

1 Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in WT Docket No. 00-32, FCC 02-47, released February 27, 2002, at paras. 26-30.

2 *Id.* at paras. 31-34.

AAR urges the Commission to use the criteria set forth in Section 309(j)(2) of the Communications Act, enacted as part of the Balanced Budget Act of 1997. That section exempted certain groups from the Commission's auction authority as "public safety radio services," which are defined as services, including private internal radio services, used by governmental as well as non-governmental entities, that are used to protect the safety of life, health, or property and that are not made commercially available to the public. According to the Conference Report accompanying the Balanced Budget Act amendments, the exemption of Section 309(j)(2) extends to private internal radio services used by utilities, railroads, metropolitan transit systems, pipelines, private ambulance companies, volunteer fire departments, and non-profit organizations that offer emergency road services, such as the American Automobile Association.³ The criteria for defining "public safety" entities under Section 309(j)(2) are broader than those used for defining public safety eligibility for use of the 700 MHz band set forth in Section 337(f) of the Act (*i.e.*, only State or local government entities whose primary mission is to protect public safety, such as police and fire departments).

AAR believes it is appropriate to afford access to the 4.9 GHz band to the broader class of public safety entities identified in the auction exemption of Section 309(j)(2) of the Act because those entities do provide essential services and critical infrastructure to the public, and because the facilities and operations of those entities may be directly involved in emergency situations. In this regard, AAR agrees with the Commission's characterization at paragraph 33 of the FNPRM that, "[t]he very nature of

3 H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997)(Conference Report).

the services provided by these entities involve potential hazards whereby reliable radio communications is an essential tool in either avoiding the occurrence of such hazards, or responding to emergency circumstances,” and that “such entities need reliable communications in order to prevent or respond to disasters or crises affecting their service to the public.” In addition, AAR believes that using the broader description of “public safety radio services” contained in Section 309(j)(2) of the Act will have the further benefit of broadening the partnership opportunities between traditional public safety entities (e.g., police and fire departments) and critical infrastructure entities such as railroads, utility companies and others, in circumstances where a coordinated response to emergency conditions would be preferred.

In conclusion, AAR respectfully requests the Commission to determine eligibility for use of the 4.9 GHz band based on the broader “public safety radio services” criteria set forth in Section 309(j)(2) of the Communications Act.

Respectfully submitted,

ASSOCIATION OF AMERICAN RAILROADS

By:



Thomas J. Keller
50 F Street, N.W.
Washington, D.C. 20001
(202) 639-2568

Louis P. Warchot
Senior Vice President-Law
and General Counsel
Dennis J. Starks
Senior Commerce Counsel
Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001
(202) 639-2502

Its Attorneys

Date: July 8, 2002

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Comments of the Association of American Railroads in WT Docket No. 00-32" was mailed by first class mail, postage prepaid, on the 8th day of July, 2002, to each of the following:

Genevieve Augustin, Esq.
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
445 12th Street, S.W.
Room 3-A 431
Washington D.C. 20554

FCC Office of Media Relations
Reference Operations Division
445 12th Street, S.W.
Room CY-A257
Washington, D.C. 20554

Qualex International
445 12 Street, S.W.,
Room CY-B402
Washington, D.C. 20554



Thomas J. Keller